

DEPARTMENT OF ENERGY**Office of Energy Efficiency and Renewable Energy****10 CFR Part 490**

[Docket No. EE-RM-95-110]

Alternative Fuel Transportation Program**AGENCY:** Department of Energy (DOE).**ACTION:** Notice of proposed rulemaking and public hearings.

SUMMARY: The Department of Energy (DOE), Office of Energy Efficiency and Renewable Energy is proposing rules for implementation of the State and Local Incentives Program. Under this Program DOE may grant financial assistance to States for projects in DOE approved State plans to promote use of alternative fuels and alternative fueled vehicles.

DATES: Written comments (six copies and, if possible, a computer disk) on the proposed rule must be received by DOE on or before May 22, 1995. Oral views, data, and arguments may be presented at a public hearing which is scheduled as follows:

1. May 1, 1995, 9 a.m., U.S. Department of Energy, Forrestal Building, Room 1E-245, 1000 Independence Avenue, SW, Washington, D.C.

Requests to speak at the hearing should be received by DOE no later than 4 p.m. on April 27, 1995. The length of each oral presentation is limited to 10 minutes.

ADDRESSES: All written comments (six copies), and requests to speak at a public hearing, are to be submitted to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE-33, Docket Number EE-RM-95-110, 1000 Independence Ave., SW, Washington, DC 20585, telephone number (202) 586-3012.

Copies of the hearing transcript and written comments may be inspected and photocopied in the DOE Freedom of Information Reading Room, Room 1E-190, (202) 586-6020, between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays. For more information concerning public comment on this proposed rulemaking, see section III of this Notice.

FOR FURTHER INFORMATION CONTACT:

Frank Mallgrave, Office of Alternative Fuels, Office of Transportation Technologies, Energy Efficiency and Renewable Energy, Department of Energy, Mail Stop EE-33, 5G-086,

Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-8077.

Vivian Lewis, Office of General Counsel, Energy Efficiency (GC-72), Department of Energy, Room 6B-256, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-9507.

For information concerning the public hearings and procedures concerning written comments: Ms. Andi Kasarsky, (202) 586-3012.

SUPPLEMENTARY INFORMATION:

- I. Introduction
- II. Section-By-Section Analysis
- III. Opportunity for Public Comment
- IV. Review Under Executive Order 12612
- V. Review under Executive Order 12778
- VI. Review under Executive Order 12866
- VII. Review Under the Regulatory Flexibility Act
- VIII. Review Under the Paperwork Reduction Act
- IX. Review Under the National Environmental Policy Act
- X. Review By Other Federal Agencies
- XI. List of Subjects
- XII. The Catalog of Federal Domestic Assistance

I. Introduction

Pursuant to Title IV, section 409 of the Energy Policy Act of 1992 (the Act) (Pub. L. 102-486), 42 U.S.C. 13235, this proposed rule will establish the State and Local Incentives Program, a financial assistance program, under which DOE will consider applications to support projects included in State plans. The proposed rule sets forth guidelines for participating States to follow in developing State plans. These plans will show how States intend to meet the Program's primary goals of accelerating the introduction and use of alternative fuels and substantial numbers of alternative fueled vehicles (AFV) by the year 2000. The proposed rule establishes grant application procedures and evaluation criteria. Participating States may also subaward to local government entities or the private sector to assist in the implementation of projects within an approved plan.

At the beginning of each fiscal year, DOE will publish a notice in the **Federal Register** and send a letter and a copy of the notice to the Governor of each State announcing the availability of funds. These notices will invite each Governor to submit to DOE a State plan, or an amendment to a previously approved plan, and apply for financial assistance to carry out the plan.

Pursuant to the Act, participating States must provide at least 20 percent of the estimated cost of the activities under their program, although the

selection criteria will reward proposals with higher levels of cost sharing. This minimum cost sharing requirement may be met with in-kind services and cost contributions by other public and private entities that commit to a State plan. Upon review and approval of the plan by DOE, Federal assistance may be provided to the State. This assistance may be in the form of grants of up to 80% of the costs of implementing a plan's project(s), information, and technical assistance.

DOE will competitively evaluate proposed projects included in approved State plans against criteria described in this notice, including projected energy-related benefits, as measured by the amount of conventional motor fuel that may be displaced by the use of alternative fuels, and the projected number of registered alternative fueled vehicles as a percentage of all registered vehicles as of December 31, 2000. No State will receive more than one grant per year. A grant may, however, cover more than one project. No award shall exceed 10 percent of the total fiscal year funding for this program. All project periods must be consistent with the goals stated in a State plan and may not extend beyond the end of the year 2000.

The Department has, in another notice of proposed rulemaking, published on February 28, 1995 (60 FR 10970), proposed to establish rules concerning alternative fueled vehicles in part 490 of title 10 of the Code of Federal Regulations. This proposed rule would add subpart B to the proposed part 490.

II. Section-By-Section Analysis

This part of the Supplementary Information discusses those provisions of the proposed regulations that are not self-explanatory.

Proposed Section 490.101 Definitions

Some of the terms used in this proposed rule will be defined in a general definition section for part 490 to be codified in 10 CFR 490.2. Those definitions are proposed in a **Federal Register** notice dated February 28, 1995.

The proposed definition for "life cycle" is based on DOE's interpretation of the statutory provision which contains this phrase. Section 409(b)(2)(A) of the Act provides that in approving a State plan and determining the amount of financial assistance, if any, to be awarded, DOE must take into account, among other factors, an estimate of energy-related and environment-related impacts, on a life cycle basis, of the introduction and use of alternative fueled vehicles included in the State plan, compared to conventional motor vehicles. DOE is

proposing to define the "life cycle" of an alternative fueled vehicle as the time from the date the vehicle is registered by the State's motor vehicle agency as an alternative fueled vehicle, and ending when the vehicle is no longer registered as an alternative fueled vehicle. Because of the critical nature of a "life cycle basis" and how it will impact on the evaluation of State plans and the projects within the State plans, DOE invites comments on this definition.

Proposed Section 490.102 Who May Apply

The proposed rule would require any application for financial assistance and State plan submission to be submitted by the chief executive of a State. Such submissions are optional to the States, but any submission must comply with the requirements of this subpart.

Proposed Section 490.103 When and Where To Apply

The deadline date for submission of State plans to DOE may vary from year to year, depending upon the availability of funding. Normally funding is made available at the beginning of a fiscal year which commences October 1 of each year. Each year, after funding has been appropriated by Congress, DOE is proposing to announce the submission deadline in a **Federal Register** notice, and a letter to the Governor of each State, identifying the amount of funding available, as well as providing the address to which submissions may be sent.

Proposed Section 490.104 Content of State Plans

In paragraph (a) of this section, DOE is proposing to require that the State plan include the name and description of the lead organization designated to be responsible for implementing the plan and administering any grant awarded. DOE needs this information to ensure that it will be dealing with the proper State authority.

Paragraph (c) sets forth the primary goals of the Program which are to substantially increase, by the year 2000, the number of alternative fueled vehicles registered in the State and the number of alternative fuel refueling facilities licensed for operation. Each State plan must provide detailed descriptions as to how these goals are to be achieved.

With the exception of proposed paragraph (d)(11), all of the mandatory analyses set forth in paragraph (d) are statutorily required.

Paragraph (d)(5), which corresponds to section 409(a)(3)(E) of the Act, requires a State plan to describe how the

State treats the sales of alternative fuels for use in alternative fueled vehicles. This information will be helpful to DOE in determining whether the State's methods of treating the sales of alternative fuels will actually increase the use of alternative fuels. If these methods are effective, DOE will share this information with all the States in an annual report which will be sent both to Congress and the Governor of each State.

Proposed paragraph (d)(8) requires, consistent with section 409(a)(3)(I) of the Act, that the plan identify any existing State laws or regulations, including traffic safety prohibitions, that would, unless amended, impede the implementation of the goals of this Program. The plan must describe how the State intends to resolve such impediments.

Paragraph (d)(9), which corresponds to section 409(a)(3)(J) of the Act, asks States to describe the services provided by municipal, county, and regional transit authorities. This requirement is important because DOE is interested in knowing how States will coordinate with other governmental entities in carrying out a State plan. To accelerate the use of alternative fueled vehicles, there must be adequate refueling facilities. Coordination and cooperation among the various governmental entities within the States will be of great importance in facilitating the availability of alternative fuels in areas where alternative fueled vehicles operate.

Proposed paragraph (d)(11) also provides that each State plan shall consider participation in DOE's Clean Cities Program. The Clean Cities Program provides an opportunity for States to get more involved in coordinating with other States as well as with alternative fuel providers, local governments, vehicle manufacturers, and others. The Clean Cities' goals are to put into operation 250,000 new alternative fueled vehicles and 500 to 1000 refueling stations in 50 cities by 1996. As of January, 1995, 34 cities in 21 States are participating in the Clean Cities Program. For information on the Clean Cities Program, please write to Department of Energy, Clean Cities Program, EE-33, 1000 Independence Avenue, SW., Washington, DC 20585, 202-586-1885.

Proposed Section 490.105 State Plan Amendments

Subsequent to an initial award under this subpart, a State may, with DOE approval, amend a plan with updated information. A State must submit an amendment to a proposed plan if any of

the previously submitted information corresponding to paragraphs (e), (f), and (g) of proposed § 490.104 has changed.

Proposed Section 490.106 Review of Assistance Applications

DOE is proposing in paragraph (e) of section 490.106 to competitively evaluate proposed projects in approved plans against specified criteria listed in descending order of importance. The most important proposed criterion as set forth in paragraph (e)(1) is the projected energy-related benefits, per dollar expended, that may be achieved through the use of alternative fuels from the start of the program through December 31, 2000. DOE is proposing that energy-related benefits, be measured on a life cycle basis through the use of alternative fueled vehicles, by the amount of conventional motor fuel that is displaced by alternative fuels. The calculation of displacement may be denominated in gallons, British thermal units (Btus) or any other appropriate method. For DOE to evaluate the energy benefits of a proposed project, it is important that the State indicate the degree to which alternative fuels will actually be used by alternative fueled vehicles. For projects that provide for dedicated alternative fueled vehicles to be placed into use, alternative fuel use is assumed and no further demonstration is needed. For projects that include vehicles capable of operating on gasoline or diesel, as well as alternative fuel, estimates of the actual alternative fuel use must be specified, accompanied by information about measures to realize such levels of use. The energy related benefits are proposed to be included in the annual report that participating States must submit to DOE as provided in proposed section 490.110.

The energy related benefit is the highest ranked criterion used to evaluate proposed projects in State plans. DOE welcomes and encourages comments on the proposed measure, or any others that are recommended.

The second most important criterion as proposed in paragraph (e)(2) is the projected number of alternative fueled vehicles as a percentage of vehicles registered in the State as of December 31, 2000.

Proposed § 490.104(g) reflects the statutory requirement that DOE shall not approve a State plan unless the State agrees to contribute at least 20 percent of the cost of plan projects. In addition, DOE is proposing in paragraph (e)(3) that the third most important criterion in evaluating proposed projects is the extent of cost sharing in excess of the minimum 20 percent cost share and the

level of actual non-Federal outlays rather than in-kind contributions. Cost sharing may come from any non-Federal source, private or public. The additional cost sharing will enable DOE to stretch scarce appropriations to cover more projects.

The fourth most important criterion, as proposed in paragraph (e)(4), would be the projected environmental benefits derived as of December 31, 2000 through the use of alternative fueled vehicles. Environmental benefits in this context are most appropriately based on reductions of exhaust, evaporative and greenhouse gas emissions. DOE believes that this criterion is important because use of alternative fueled vehicles has the significant potential for reducing vehicle emissions such as hydrocarbons from combustion and fuel evaporation, and carbon monoxide, nitrogen oxides, and other pollutants from combustion. In addition, there is the potential of reducing vehicle emissions of greenhouse gases.

State plans which request consideration under the environmental benefit criterion must provide an estimate of how many alternative fueled vehicles under the plan will be certified to each of the Environmental Protection Agency (EPA) clean fuel vehicle emission standards pursuant to 40 CFR part 88. Benefits claimed will be evaluated by the number of alternative fueled vehicles certified to the various tiers of EPA clean vehicle standards, such as low emission, inherently low emission, ultra-low emission and zero emission vehicles. In calculating environmental benefits to be derived from alternative fueled vehicles, States may want to refer to EPA's Technical Report entitled Lifetime Emissions for Clean Fuel Fleet Vehicles, dated October 1993.

DOE is proposing that a report, entitled Emissions of Greenhouse Gases from the Use of Transportation Fuels and Electricity by M. A. DeLuchi, dated November 1991 and amended by letter April 22, 1992, serve as the basis for the calculation of greenhouse gas emissions. This report was prepared for the Center for Transportation Research, Energy Systems Division, Argonne National Laboratory. It is available to the public from the National Technical Information Service, U.S. Department of Commerce, 5825 Port Royal Road, Springfield, Virginia 22161. This report sets forth the total carbon dioxide equivalent grams per mile emissions, by fuel and vehicle type. The method of calculation is simply a matter of applying the estimated number of miles traveled per year, by vehicle and fuel type, against the carbon dioxide equivalent grams per

mile. During the hearings and sixty day comment period DOE urges suggestions as to the appropriateness of this method and recommendations for alternative methods.

DOE is proposing in paragraph (e)(5) that the fifth most important criterion be the number of alternative fuel refueling facilities projected to be in operation by December 31, 2000.

Proposed paragraph (e)(6) addresses interstate coordination. DOE is suggesting, as an option, that States consider coordinating the development of alternative fuel refueling facilities along interstate highways with adjacent States, where applicable. The benefit from such coordination would be to increase the potential driving range of alternative fueled vehicles and, thereby, make their use more widely feasible and attractive.

Proposed paragraph (e)(7) provides the seventh criterion which is participation in DOE's Clean Cities Program. Neither paragraph (e)(6) nor (e)(7) of these criteria are set forth in the Act, but both are considered very important for the long term effectiveness of the program.

The eighth criterion, as proposed in paragraph (e)(8), deals with how well a State has implemented its plan during the previous budget period. If a State requests funding for new projects in a subsequent budget period, but has failed to implement its previously approved projects in a timely fashion, the new plan may not receive favorable consideration.

The ninth and last criterion, as proposed in paragraph (e)(9), relates to the innovation and creativity of the proposed projects. DOE encourages States to be resourceful in reaching the goals and objectives of this proposed regulation beyond the minimum requirements. For example, the number of alternative fueled vehicles that are registered in a State is a key element within the State and Local Incentives Program. Based on information available to DOE, very few States, if any, are able to distinguish the fuel system type of vehicles registered in the State. As an additional project that may receive favorable consideration, States may want to modify their registration system so that alternative fueled vehicles can be identified. This kind of information would assist DOE in gathering information on the distribution of each type of alternative fueled vehicle. Other innovative and creative projects might include far-reaching public relations programs or information exchange activities which encourage local governments and the private sector to acquire alternative fueled vehicles.

Although Section 409 of the Act provides for the use of financial assistance to acquire alternative fueled vehicles, and States are required to acquire a certain percentage of alternative fueled vehicles under Section 507(o) of the Act, States are encouraged to develop plans that would use grants for broader purposes. State plans will receive favorable consideration if they consider resourceful and innovative methods of increasing alternative fuel, encouraging acquisition of alternative fueled vehicles by local governments and private parties, and expanding the alternative fuel infrastructure.

In paragraph (f), DOE is proposing to limit the amount of funding that any State may receive. Based on prior experience, DOE does not expect to be able to provide funding for each and every project within an approved plan. DOE, however, wants to ensure that as many States as possible participate in this Program. Therefore, it is proposed that, regardless of the number of proposed projects in an approved plan, each State may not receive more than one grant per calendar year. The grant may, however, cover more than one project. Additionally, each award may not exceed 10 percent of the total fiscal year funding for the State and Local Incentives Program.

Proposed Section 490.107 Expenditure Limitations

DOE is proposing that overhead costs for State programs be limited to 10 percent of a financial award. This would include costs related to salaries, office equipment, and library materials. This provision is directly related to achieving the overall goal of this Program—to substantially increase the use of alternative fueled vehicles by the year 2000. It will ensure that 90 percent of the funds are expended on activities and project costs that produce goal-related results.

Proposed Section 490.108 De-Obligation of Funds

DOE is proposing to deobligate any funds that a State has failed to obligate or expend within a budget period. A budget period is generally 12 months and may not exceed 24 months. If the funds are not obligated or expended by the State within the budget period, DOE is proposing to de-obligate the funds which shall become available for award, in the same manner as newly appropriated funds, to another financial assistance recipient.

Proposed Section 490.109 Technical Assistance and Information

DOE is proposing, pursuant to section 409(b)(1)(A) of the Act, to provide States with information and technical assistance if requested, subject to the availability of resources. One form of such assistance could be coordinating the acquisition of alternative fueled vehicles with Federal procurement of these vehicles. Such coordinated acquisition may decrease the costs of the alternative fueled vehicles to the State.

Proposed Section 490.110 Reports

Each State awarded a grant under this proposed subpart must submit an annual report to DOE for the period of time covered by the State plan. This report must be submitted not later than 30 days after the close of the calendar year. The information required in the State report will be used to monitor the implementation of the State plan, the projects within an approved plan, and the expenditure of funds. Pursuant to section 409(c)(2) of the Act, DOE must report annually to the President and Congress. Information in the State reports will also be used to compile the DOE report to Congress and the President.

III. Opportunity for Public Comment

A. Written Comment Procedures

Interested persons are invited to participate in this rulemaking by submitting data, views or comments with respect to the matters set forth in this notice.

Written comments (6 copies) should be identified on the outside of the envelope, and on the documents themselves, with the designation: "State and Local Incentives Program, Notice of Proposed Rulemaking, Docket Number EE-RM-95-110", and must be received by the date specified at the beginning of this notice. In the event any person wishing to submit a written comment cannot provide six copies, alternative arrangements can be made in advance by calling Ms. Andi Kasarsky at (202) 586-3012. Additionally, DOE would appreciate an electronic copy of the comments to the extent possible. The Department is currently using Wordperfect 5.1 for DOS.

All comments received on or before the date specified at the beginning of this notice and other relevant information will be considered by DOE before final action is taken on the proposed rule. All comments submitted will be available for examination in the Rule Docket both before and after the closing date for comments. In addition,

a transcript of the proceedings of the public hearing will be filed in the docket.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data that is believed to be confidential, and which may be exempt by law from public disclosure, should submit one complete copy, as well as two copies from which the information claimed to be confidential has been deleted. The Department of Energy shall make its own determination of any such claim and treat it according to its determination.

B. Public Hearing Procedures

The time and place of the public hearing is indicated at the **ADDRESSES** section of this notice. Any person who has an interest in the proposed regulation or who is a representative of a group or class of persons which has an interest in it may make a request for an opportunity to make an oral presentation at the hearing. A request to speak at the hearing should be sent to the address or phone number indicated in the **ADDRESSES** section of this notice and be received by the time specified in the **DATES** section of this notice.

The person making the request should briefly describe his or her interest in the proceedings and, if appropriate, state why that person is a proper representative of a group. The person should also provide a phone number where he/she may be reached during the day. Each person selected to speak at the public hearing will be notified as to the approximate time their presentation will be given. Six copies of the speaker's statement should be brought to the hearing. In the event any person wishing to testify cannot meet this requirement, alternative arrangements can be made in advance by so indicating in a letter or phone call to Ms. Andi Kasarsky ((202)-586-3012) requesting an opportunity to make an oral presentation.

The Department of Energy reserves the right to select persons to be heard at the hearing, to schedule their presentations, and to establish procedures governing the conduct of the hearing. The length of each presentation will be limited to ten minutes, or based on the number of persons requesting to speak.

A Department of Energy official will preside at the hearing. This will not be a judicial or evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 553. At the conclusion of all initial oral statements, each person will be given the opportunity to make a rebuttal statement. The rebuttal

statements will be given in the order in which the initial statements were made.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the Presiding Officer.

If DOE must cancel the hearing, DOE will make every effort to publish an advance notice of such cancellation in the **Federal Register**. Notice of cancellation will also be given to all persons scheduled to speak at the hearing. Hearing dates may be canceled in the event no public testimony has been scheduled in advance.

IV. Review Under Executive Order 12612

Executive Order 12612 requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or on the distribution of power among various levels of government. If there are sufficient substantial direct effects, the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing policy action.

Although today's proposed rule is mandated by the Act, State participation in the State and Local Incentives Program is voluntary. This proposed rule simply establishes ground rules for implementation of the Program. Many States are currently conducting alternative fueled vehicle programs and are anticipating that the influx of Federal funding through the State and Local Incentives Program will assist them in achieving their goals of accelerating the use of alternative fueled vehicles.

Today's proposed rule will have direct effects on those States that choose to participate in the Program in that a State must share at least 20 percent of the cost of implementing the State plan's projects, and must comply with the other requirements of the Program. Most of the proposed rule's provisions, including the cost sharing requirement, correspond to provisions of the Act. Wherever possible, however, DOE has attempted to simplify the implementation of this Program by providing as much flexibility as possible to the States.

DOE has determined that this proposed rule will not have a substantial direct effect on the institutional interests or traditional functions of States in relationship to the Federal Government. Therefore, preparation of a federalism assessment is unnecessary.

V. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. The requirements in section (2)(a) and (b)(2) of this Executive Order include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation by providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make all reasonable efforts to ensure that regulations specify clearly any preemptive effect on existing Federal law or regulation and any retroactive effects. Rulemaking notices must describe any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of administrative remedies. DOE certifies that the proposed rule meets the requirements of section 2(a) and (b)(2) of Executive Order 12778.

VI. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a significant regulatory action under Executive Order 12866, Regulatory Planning and Review, October 4, 1993. Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA).

VII. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, Public Law 96-354, 5 U.S.C. 601 *et seq.*, requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities. This proposed rule will impact only those States that decide to initiate or in some instances, continue an alternative fuel and alternative fueled vehicle program. The Department of Energy, therefore, certifies that there will not be a significant economic impact on a substantial number of small entities, and that preparation of a regulatory flexibility analysis is not warranted.

VIII. Review Under the Paperwork Reduction Act

New information collection or record keeping requirements are subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Accordingly, this notice has been submitted to the Office of Management and Budget for review and approval of paperwork requirements.

The Energy Policy Act requires DOE to report annually to Congress and the President and to furnish copies of the report to each State participating in the Program. Most of the information required to be included in the report can be collected only from the participating States. This information is necessary to determine if the Program is being implemented adequately and to determine the effectiveness of the Program in accelerating the use of alternative fueled vehicles. DOE cannot estimate how many States may participate in the Program.

The public reporting burden is estimated to average eight hours per response, including time for reviewing instructions, gathering and maintaining the data needed, and completing and retrieving the collection of information. DOE has attempted to require States to collect and maintain only those records that are essential in assisting DOE to administer the Program in an effective manner and to comply with a reporting requirement to the President and Congress.

Comments on the information collection requirements contained in this rule should be submitted both to the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Hearings and Dockets, Docket Number EE-RM-95-110, at the address given earlier in this notice, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

IX. Review Under the National Environmental Policy Act

The Department of Energy has concluded that, before the final promulgation of this rule and related rules implementing the alternative fueled vehicle provisions of the Energy Policy Act of 1992, an Environmental Assessment will be completed.

X. Review By Other Federal Agencies

The Department of Energy has provided a draft copy of this notice to the staff of the Administrator of the Environmental Protection Agency and the Secretary of the Department of Transportation pursuant to Section 409(a)(2) of the Energy Policy Act of 1992. The Administrator responded regarding emission criteria and certification of vehicles. These responses were incorporated into the Notice of Proposed Rule. The Secretary of Transportation had no comment. The Department of Energy has also provided a draft copy of this notice to the Automotive Commodity Center, Federal Supply Service, General Services

Administration, pursuant to Section 409(b)(3).

XI. List of Subjects in 10 CFR Part 490

Appeal procedures, Energy, Energy conservation, Fuel, Gasoline, Motor vehicles, Oil imports, Petroleum, Recordkeeping and reporting requirements and Utilities.

XII. The Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the State and Local Incentive Program is 81.111.

Issued in Washington, D.C., March 10, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reason set forth in the preamble, DOE proposes to amend part 490 of title 10 of the Code of Federal Regulations as proposed on February 28, 1995 and as set forth below:

PART 490—ALTERNATIVE FUEL TRANSPORTATION PROGRAM

1. The authority citation to part 490 is revised to read as follows:

Authority: 42 U.S.C. 7191; 42 U.S.C. 13235; 42 U.S.C. 13251; 42 U.S.C. 13257; 42 U.S.C. 13258; 42 U.S.C. 13260-3.

2. A new subpart B is proposed to be added to part 490 as set forth below:

Subpart B—State and Local Incentives Program

- 490.100 Purpose and scope.
- 490.101 Definitions.
- 490.102 Who may apply.
- 490.103 When and where to apply.
- 490.104 Content of State plans.
- 490.105 State plan amendments.
- 490.106 Review of assistance applications.
- 490.107 Expenditure limitations.
- 490.108 De-obligation of funds.
- 490.109 Technical assistance and information.
- 490.110 Reports.

§ 490.100 Purpose and scope.

(a) This subpart sets forth the guidelines for implementation of the State and Local Incentives Program. Under this program, DOE may grant financial assistance to States for projects in DOE-approved State plans. This subpart provides guidelines for development of State plans to accelerate the introduction and use of alternative fuels and alternative fueled vehicles by the year 2000, and for applications for financial assistance to carry out projects included in approved State plans.

(b) Except as otherwise provided in this subpart, the provisions of 10 CFR part 600 apply to financial assistance awards under this part.

§ 490.101 Definitions.

In addition to the definitions found in § 490.2, the following definitions apply to this subpart—

Awardee means the State named in the notice of financial assistance award.

British thermal unit (Btu) is defined as the amount of heat required to raise the temperature of one pound of water one degree Fahrenheit.

Clean Cities Program is a voluntary Federal program designed to accelerate and expand the use of alternative fueled vehicles in communities throughout the country and to provide refueling and maintenance facilities for their operation.

Conventional motor fuel means gasoline or diesel fuel used in a motor vehicle.

Evaporative Emissions are hydrocarbons released into the atmosphere as a result of fuel evaporation from a vehicle's fuel system.

Exhaust Emissions are substances released into the atmosphere through motor vehicle tailpipes resulting either from uncombusted fuel or from chemical reactions during combustion. They can include carbon monoxide, oxides of nitrogen, hydrocarbons, and particulate matter.

Governor means the chief executive of a State or a person designated by the chief executive officer to act upon his or her behalf.

Greenhouse Gas Emissions means emissions of carbon dioxide and other gases such as chlorofluorocarbon, methane, ozone, and nitrous oxide that contribute to global climate change.

Life cycle means the period of time beginning with the date on which the vehicle is registered as an alternative fueled vehicle by the motor vehicle agency of the State and ending on the date the vehicle is no longer registered as an alternative fueled vehicle.

Project means any activity specified in a State plan which is undertaken to achieve the goals set forth in the State plan.

State plan means a State and Local Incentives plan submitted to DOE that contains proposed projects and provisions designed to introduce a substantial number of alternative fueled vehicles and increase the use of alternative fuels by the year 2000.

§ 490.102 Who may apply.

The Governor of any State may submit to DOE a State plan and apply for Federal assistance to carry out that plan under this subpart.

§ 490.103 When and where to apply.

For each fiscal year, DOE will publish a notice in the **Federal Register**

announcing the availability of funds, specifying the deadline for submissions, and providing the address to which a submission may be sent. A copy of this notice will be sent to the Governor of each State. In order to be eligible for Federal assistance, a State must submit an application on standard forms, pursuant to 10 CFR Part 600, and either a proposed State plan, or a proposed State plan amendment to a previously approved plan. This submission must be made before the specified deadline.

§ 490.104 Content of State plans.

(a) *Organization.* Each State plan must name and describe the functions of the State organization designated by the Governor to carry out the provisions of the plan.

(b) *Intergovernmental coordination.* Each State plan shall describe the manner in which the State intends to coordinate with the Federal Government, local governments, and the private sector in implementing the plan.

(c) *Goals.* Each State plan must identify its goals for the number of alternative fueled vehicles to be registered within the State, the amount of alternative fuel to be used within the State, and the number of alternative fuel refueling facilities to be licensed for operation. The plan must also provide a detailed description as to how these goals can be achieved by the year 2000.

(d) *Mandatory analyses.* Each State plan shall include an examination of—

(1) Exemption from State sales tax or other State or local taxes or surcharges (other than such taxes or surcharges which are dedicated for transportation purposes) with respect to alternative fueled vehicles, alternative fuels, or alternative fuel refueling facilities;

(2) The introduction of alternative fueled vehicles into State-owned or operated motor vehicle fleets;

(3) Special parking for alternative fueled vehicles at public buildings, as defined by § 490.201 of subpart A, and airport and transportation facilities;

(4) Programs of public education to promote the use of alternative fueled vehicles;

(5) The treatment of sales of alternative fuels for use in alternative fueled vehicles;

(6) Methods by which State and local governments might enhance—

(i) The availability of alternative fuels; and

(ii) The ability to recharge electric motor vehicles at public locations.

(7) Allowing public utilities to include in rates the incremental cost of—

(i) New alternative fueled vehicles;

(ii) Converting conventional vehicles to operate on alternative fuels; and

(iii) Installing alternative fuel refueling facilities; but only to the extent that the inclusion of such costs in rates would not create competitive disadvantages for other market participants, and taking into consideration the effect that inclusion of such costs would have on rates, service, and reliability to other utility customers;

(8) Whether accomplishing any of the goals of the State plan would require amendment to State law or regulations, including traffic safety prohibitions;

(9) Services provided by municipal, county, and regional transportation authorities;

(10) Effects of the State plan on programs authorized by the Intermodal Surface Transportation Efficiency Act of 1991 and amendments made by that Act;

(11) Participation in the DOE's Clean Cities Program; and

(12) Such other programs and incentives as a State may describe.

(e) *Projects.* Each State plan—

(1) Shall contain a detailed description of projects designed to result in scheduled progress toward, and achievement of, the goals of using alternative fuel and introducing substantial numbers of alternative fueled vehicles in the State by the year 2000. For each project, the plan must specify the project periods and milestones which must be consistent with the State plan goals; and

(2) Shall include estimates of the volumes of alternative fuels to be used within each calendar year as a result of each project.

(f) *Requirements.* Each State plan shall contain a detailed description of the requirements for implementing the plan, including the estimated cost and budget for implementation.

(g) *Cost Share.* Each State plan shall specify the non-federally funded share of each project, which must be at least 20 percent of the cost of the project. The plan must identify the amounts to be provided in cash and in-kind.

§ 490.105 State plan amendments.

Subsequent to an initial State plan approval and any award under this subpart, a State—

(a) May amend a State plan with the approval of DOE; and

(b) Must, in the event of any change to the provisions identified in paragraphs (e), (f) and (g) of § 490.104, submit a proposed State plan amendment with updated information for the approval of DOE.

§ 490.106 Review of assistance applications.

(a) On or before 60 days from an applicable deadline for submission of

applications for financial assistance, DOE shall review State plans or State plan amendments to determine whether they meet the requirements of this subpart and represent policies and activities reasonably designed to achieve the goals of a substantial number of alternative fueled vehicles in operation by the year 2000 and increased use of alternative fuel.

(b) DOE may request further information from States prior to completing its review under paragraph (a) of this section.

(c) DOE may allow a reasonable period of time to revise a proposed State plan or State plan amendment, or may condition approval on acceptance of revisions deemed necessary by DOE. A grant will not be awarded until all conditions are satisfied.

(d) If DOE finally disapproves a State plan or State plan amendment, DOE shall notify the Governor in writing with a statement of reasons.

(e) On the basis of approved State plans or approved State plan amendments, DOE shall evaluate proposed projects competitively against the following criteria which are listed in descending order of importance:

(1) Projected energy-related benefits, per dollar expended, on a life-cycle basis, through the use of alternative fueled vehicles, as measured by the amount of conventional motor fuel that is displaced by alternative fuels from the start of the project through December 31, 2000. This displacement may be calculated on the basis of gallons, British thermal units (Btus), or any other appropriate method.

(2) Projected number of alternative fueled vehicles introduced as of December 31, 2000, as a result of the project;

(3) Extent of cost sharing in excess of the minimum required 20 percent cost share and extent of contribution made in cash rather than in-kind;

(4) Projected environmental benefits, on a life-cycle basis, measured in terms of the reduction of exhaust, evaporative, and greenhouse gas emissions through December 31, 2000. Projections should be based on the number of alternative fueled vehicles that will be certified as meeting various EPA clean vehicle emission standards pursuant to 40 CFR part 88;

(5) Projected number of alternative fuel refueling facilities as of December 31, 2000;

(6) Extent of interstate collaboration on refueling infrastructure, including collaboration on development of alternative fuel refueling facilities along interstate highways with adjacent States;

(7) Extent of participation in DOE's Clean Cities Program;

(8) Effectiveness in carrying out State plan in previous budget periods; and

(9) Inclusion of creative and innovative projects.

(f) A State may not receive more than one grant per calendar year. This grant may cover multiple projects or projects expanding for more than one year. No award is to exceed 10 percent of the total fiscal year funding for the State and Local Incentives Program. In those instances where projects in an approved plan are not funded, the State may reapply for financial assistance for such projects in subsequent years.

§ 490.107 Expenditure Limitations.

A State may not expend more than 10 percent of a financial award for indirect costs including, but not limited to, salaries, equipment, and library materials.

§ 490.108 De-obligation of funds.

A budget period should typically be 12 months, but may not exceed 24 months unless an extension is approved by DOE. Any funds, under a notice of financial assistance award, which

remain unexpended at the end of the budget period shall be de-obligated. DOE shall make these funds available for award, in the same manner as newly appropriated funds.

§ 490.109 Technical assistance and information.

At the request of the Governor of any participating State and subject to the availability of personnel and funds, DOE will provide technical assistance and information to the State in connection with effectuating the purposes of this subpart. Non-financial assistance, including coordinating the acquisition of alternative fueled vehicles with Federal procurement of alternative fueled vehicles, will be provided.

§ 490.110 Reports.

(a) For the period of time covered by a State plan, an awardee shall submit to DOE an annual report each calendar year and not later than 30 days after the close of the calendar year, which shall include at a minimum—

(1) The estimated number of alternative fueled vehicles in use in the State;

(2) A description of Federal, State and local programs undertaken within the State to provide incentives for the introduction of alternative fueled vehicles, whether or not these programs are within the State plan; and

(3) The estimated energy and environmental benefits of the State plan.

(b) An awardee shall submit to DOE a financial status report (FSR) (OMB No. 0348-0039) within 90 days after completion of each budget period. For budget periods exceeding 12 months, an FSR is also required within 90 days after the first 12 months, unless waived by the contracting officer.

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